IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 13TH SEPTEMBER 2006 / 22ND BHADRA 1928

OP.No. 18728 of 2000(D)

PETITIONER:

ROCKY V. JAMES,
VATTAKUZHIYIL HOUSE,
CARDAMOM TRADER,
KORENGATTY P.O.,
ADIMALI.

BY ADV. SRI.RAJAN JOSEPH

RESPONDENTS:
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1. THE DISTRICT COLLECTOR,
IDUKKI, PAINAV.P.O.

2. THE DEPUTY TAHSILDAR(RR),
TALUK OFFICE, DEVIKULAM.

3. AGRICULTURAL INCOME TAX AND
SALES TAX OFFICER, ADIMALI.

4. K.K.ALIAS, KAKKADASSERYIL HOUSE,
14TH MILES, VALARA P.O., ADIMALI.

BY ADV. SRI.P.K.MOHAMED JAMEEL
R1 TO 3 BY G.P. SRI.P.K.ABOOBACKER
R4 BY ADV. SRI.AUGUSTINE JOSEPH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/09/2006, ALONG WITH OP NO. 20529 OF 2000, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.31128/2000 IN O.P. NO.18728/2000

DISMISSED:

13.9.2006 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF JUDGMENT DT.29.10.98 IN O.P. 19683/1998-R OF THIS HON'BLE COURT.

P2: TRUE COPY OF THE PROCEEDINGS DT.4.1.2000 OF R1.

P3: TRUE COPY OF R.R. NOICE DT.25.5.2000 OF R2.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. Nos.18728 & 20529 of 2000

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Dated this the 13th day of September, 2006.

JUDGMENT

Heard counsel for the common petitioner in both the O.Ps. and the Government Pleader. The petitioner along with 4th respondent in O.P. 18728/2000 and the son of the said 4th respondent carried on business in partnership. The business is stated to be closed. Challenge is against recovery proceedings for recovery of arrears of tax due from the firm. Government Pleader rightly pointed out that all partners are jointly and severally liable under Section 21 of the KGST Act and if default is continued, sureties can also be proceeded with in accordance with the surety bonds executed by them. However, since petitioner has a case that one third is paid by him being his share, I feel on equitable considerations recovery should be proceeded against other partners. However, if amount could not be recovered from other partners, then the Revenue authorities are free to recover the arrears of sales tax from the petitioner as petitioner is jointly and severally liable along with other partners. It is for the petitioner to give address and particulars of assets of the other partners to the Tahsildar after remittance of one third if not already remitted and if petitioner furnishes such details, then the Tahsildar will first proceed for recovery against those persons. However, in the event of failure to recover the amount, recovery can be made against all the partners including the petitioner and the sureties as stated above. If

one third is already paid by the petitioner, then recovery of two third against the petitioner will remain stayed till 31.1.2007 for proceeding for recovery against other partners. However, if recovery is not effected before 31.1.2007, recovery can be continued thereafter against the petitioner also. The petitioner will produce particulars of address and properties of other partners for the Tahsildar to proceed for recovery against them along with payment of one third if not already paid.

The O.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms